IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2307 OF 2005

Pravin V. Mistry & Anr. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.R.D.Dave for the petitioners
Ms M.M.Jadhav, A.G.P. for Respondent No.1
Mr.S.G.Surana for Respondent No.5.

CORAM: SMT.RANJANA DESAI & A.S.OKA,JJ.
DATE : NOVEMBER 17,2005

P.C.:

1. Heard learned counsel for the petitioners. The prayer in this petition is that the respondents be directed to give equivalent area of the old premises admeasuring 683.12 sq.ft. or to give two commercial premises admeasuring 225 sq.ft. as per respondent No.4's letter dated 18th February 1997.

2. We have heard the learned counsel for the petitioners and learned counsel for respondent No.5. The learned counsel for respondent No.5 has drawn our attention to the order dated 4th October 2000 passed by the Division Bench of this Court in Writ Petition No.4596 of 2000 filed by the present petitioners. It appears that the challenge in the said petition was to the entire scheme and the said petition was disposed of by passing the following order :

"2. We have perused the original record produced before

us by the learned A.G.P. We have also examined the agreement made by the tenants in favour of the builders as far back as in 1992. It is pertinent to note that the present petitioner has also entered into a similar agreement whereby he agreed to accept unit No.2 in lieu of his existing premises in SRD Scheme. It seems that out of 26, 22 tenants have already shifted to the transit accommodation. The work of construction is hampered only due to non cooperation by the petitioner. Inspite of the agreement made in 1992, he now wants to back out from the scheme. Both the society and the builders have assured the Court that the petitioner will be given Unit No.2 as per the agreement between the parties. We are, therefore, not inclined to interfere with the impugned order passed by the Competent Authority. Petition is dismissed. Ad-interim relief stands vacated."

3. We are also informed that thereafter petitioner 1 has entered into an agreement with the developer and pursuant to the said agreement he has accepted one tenement admeasuring 225 sq.ft. We are distressed to note that these material facts have not been mentioned in the present petition. In view of the above, we are unable to entertain this petition. The petition is rejected.

4. The learned counsel for the petitioners stated that application made by the petitioners with regard to excess area is pending with respondent Nos.2 and 3. If any such application is pending, respondent Nos.2 and 3 shall dispose the same on its own merits and in accordance with law after hearing all concerned parties. We make it clear that we have not expressed any opinion on merits of the said application.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)